REMARKS

Reconsideration of this application is respectfully requested. Claims 1, 2, 5-10, 13-61, 63, 65, and 66 are pending. Claims 3, 4, 11, 12, 62, and 64 have been cancelled. All of the pending claims stand rejected.

REJECTIONS FOR ALLEGED DOUBLE PATENTING

I. Rejections Over Claims 1-61 of U.S. Patent No. 6,849,748

All of the pending claims stand rejected on the ground of non-statutory (obviousness-type) double patenting as allegedly unpatentable over claims 1-61 of U.S. Patent No. 6,849,748. The '748 patent is the immediate parent of this application.

A terminal disclaimer of the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of the '748 patent is included herewith. Applicant submits that the terminal disclaimer is sufficient to eliminate the double patenting rejection made over the '748 patent. Withdrawal of the rejection and allowance of all claims are requested. Applicant notes that the filing of the terminal disclaimer is made to expedite prosecution, and should not be viewed as agreement with or acquiescence to the arguments or reasoning in the Office Action.

II. Rejections Over Claims 1-18 of Copending United States Patent Application No. 11/716,277

All of the pending claims stand rejected on the ground of non-statutory (obviousness-type) double patenting as allegedly unpatentable over claims 1-18 of pending U.S. Patent Application No. 11/716,277 ("the '277 application"). The Applicant respectfully disagrees.

The Office Action states that an obviousness-type double patenting rejection is appropriate because the claims of this application and those of the '277 application are in a genus-species relationship. This is not the case for at least one reason. The claims of this application state that the process is conducted without a solvent. The claims of the '277 application state that the process is conducted with a solvent. There is an undeniable difference between a process that is conducted in solution and a process that is conducted with the

ingredients in molten form. There is no genus-species relationship between the claims of this application and those of the '277 patent.

The Office Action attempts to overcome this deficiency by noting that the specification of the '277 application states that the process can be conducted with or without a solvent. Although the specification may be used to aid in defining certain terms, the specification is not determinative of an obviousness-type double patenting rejection. "In passing upon questions of double patenting and restriction, *it is the claimed subject matter that is considered* and such claimed subject matter must be compared in order to determine the question of distinctness or independence." M.P.E.P. § 806.01 (emphasis added).

If the claims of the two applications are considered, the impropriety of an obviousness-type double patenting rejection is clear. The rejection should be withdrawn, and the claims should be allowed.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and as such, the Application is in condition for allowance. If the Examiner believes that personal communication would expedite prosecution of this Application, the Examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

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